Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

NO. 79-2074

MELBA TILL ALLEN,

PETITIONER,

VS.

STATE OF ALABAMA,

RESPONDENT.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Comes now the State of Alabama by and through the Attorney General of Alabama and respectfully asserts that the Petition for Writ of Certiorari is due to be dismissed and that this matter should not be reviewed by this Honorable Court.

STATEMENT OF THE CASE

This case arose from the Circuit Court of Montgomery County, Alabama after the Petitioner was convicted therein for a violation of Act No. 130 of the Alabama Legislature,

Regular Session, 1975, hereafter ethics act. (A photocopy of certain pertinent statutes including this act are included with the petition and brief of Mrs. Allen) The Petitioner was sentenced to the penitentiary for a term of one year.

The appeal of that conviction resulted in an affirmance by the Alabama Court of Criminal Appeals in an opinion issued December 18, 1979. Application for rehearing was made by the Appellant and was overruled without opinion on January 22, 1980. A Petition for Writ of Certiorari was filed in the Alabama Supreme Court which was denied without opinion, on March 28, 1980.

The Petitioner filed an Application for stay of sentence pending the present petition in this Honorable Court.

ARGUMENT IN OPPOSITION TO THE GRANTING OF THE WRIT

1. The decision and rulings by the Alabama Courts concerning the Petitioner's rights to due process in regard to her trial and conviction under the ethics act were in

> complete accord with the decisions of this Honorable Court. There is no showing that any violation of constitutional rights occurred by the trial and conviction under this act.

The Petitioner's first reason as to why this writ should be granted deals with a question of whether an Alabama Statute was properly applied to Petitioner's case. Further, the Petitioner's "due process" argument consists of allegations of fact in regard to whether the Alabama Ethics Commission was required to give Mrs. Allen a hearing before charges could have been brought. These state law questions were decided by the Alabama Courts and those decisions were in conformity with the decisions of this Honorable Court.

The Petitioner has cited two cases which she contends are in conflict with the Alabama decision in her case. However, a reading of Vitarelli v. Scaton, 359 U.S. 535, 3 L. Ed. 1012, 79 S. Ct. 968 (1959) and Service v. Dulles, 354 U.S. 363, 1 L. Ed. 2d 1403, 77 S. Ct. 1152 (1957)

will reveal that those decisions are so varied from the issues at bar that they don't merit consideration. Obviously they don't show a conflict sufficient (if any at all) to warrant relief.

The Petitioner also cites Boddie v. Connecticut, 401 U.S. 371, 28 L. Ed. 2d 113, 91 S. Ct. 780 (1971) and Giaccio v. Pennsylvania, 382 U.S. 399, 15 L. Ed. 2d 447, 86 S. Ct. 518 (1966) in order to define due process. The Respondent has no quarrel with that definition and only adds that those protections were afforded to this Petitioner.

The Petition now before the Court has only alleged that the decision by the Alabama Courts was in conflict with prior decisions of this Court. The Respondent's opposition to that allegation is discussed above. The Respondent would further offer, as follows, other reasons as to why the writ should not be granted.

Initially, the Respondent would submit that the issue now before the Court is one of little significance or importance as far as practical impact on future litigation.

Without a doubt this issue is one which turns on its own particular fact situation and is one which few if any other persons will be affected thereby. By the Petitioner's brief itself it can be seen that the issue raised is based solely upon whether Mrs. Allen was given an adequate hearing under State law. This question is one which can turn only upon those peculiar facts of the case at bar. This ground alone is sufficient reason for this Honorable Court to find that the case at bar is not of importance sufficient to grant the writ.

CONCLUSION

Based on the above showing that the holding by the Alabama Courts in this cause is not in conflict with the decisions of this Honorable Court it is respectfully urged that the Petition for Writ of Certiorari is due to be denied.

Respectfully submitted,

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Chief Assistant Attorney General

JAMES F. HAMTPON
Special Assistant Attorney General

COUNSEL FOR RESPONDENT

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AFFIDAVIT OF PROOF OF SERVICE

State of Alabama Montgomery County

I, the undersigned, Assistant Attorney General of Alabama, 64 North Union, Montomery, Alabama 36130, hereby certify that I have deposited for service three (3) printed copies of a brief in opposition to the Writ of Certiorari to the Honorable Richard D. Horne, 301 St. Joseph Street, P.O. Box 1706, Mobile, Alabama 36601, and forty (40) printed copies to the Clerk of the Supreme Court of the United States.

Done, this the _____day of August 1980.

WALTER S. TURNER
Chief Assistant Atty. Gen.

Sworn to and subscribed before me the undersigned, this the _____ day of August, 1980.

_____

NOTARY PUBLIC

see 79
2035